Petition

Office-Supreme Court, U.S.
FILED
NOV 25 1981
ALEXANDER L. STEVAS,
CLERK

81-983

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

No.

JAMES A. CONLON, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JAMES A. CONLON
6605 Lee Chapel Rd.
Burke, Virginia 22015

Pro Se

In The

SUPREME COURT OF THE UNITED STATES
October Term, 1981

No.

JAMES A. CONLON, Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

Petitioner, James A. Conlon, petitions for a writ of certiorari to review the judgement of the United States Court of Appeals for the District of Columbia entered in the above case.

QUESTIONS PRESENTED

1. Were not Appellant's Constitutional rights to due process, to be fairly charged on truthful evidence, and to receive a fair trial, seriously and repeatedly violated:

a) when, in spite of the unequivocal grand jury testimony, affidavits, and sworn officially prepared statements of the principal Federal Reserve System officials involved, incontrovertibly establishing that the Federal Reserve had no responsibility in the selection or the acquisition of the American Bank Note Company's Security Signature System (SSS); that this responsibility and authority resided soley in the Bureau of Engraving and Printing; and, that the Bureau had properly made the decision to acquire the equipment on April 21, 1977; the Government charged in the indictment that Appellant, as Director of the Bureau of Engraving and Printing, on June 15 and 24, 1977, did un-

lawfully recommend that the Federal Reserve consider the company's proposal for the equipment, in alleged violation of 18 U.S.C. 208(a);

(b) When, further, the Government opposed Appellant's pre-trial motion to remove the erroneous charges by vigorously asserting to the District Court that Appellant "participated substantially in the decision-making process regarding the proposed system";

(c) when, in spite of the trial testimony of the Federal Reserve officials affirming their previous testimony and sworn statements, the Government attorneys repeatedly told the jury that Appellant, in June 1977, had urged the Federal Reserve "to buy", "to purchase" the equipment, and that Appellant had made "a strong recommendation for the acquisition of the equipment" to the Federal Reserve;

(d) when, in making the particularized

indictment charge that on June 15, 1977, Appellant had urged a Governor of the Federal Reserve to consider the company's proposal, the Government furnished no documents or other information in Court-ordered Jencks material to show any basis for the charge or any such statement by the Governor who had not appeared before the grand jury, and who had stated in an FBI interview that Appellant had called on June 15, 1977 to say he was retiring and would no longer be involved in the SSS; and whose sworn officially prepared statement to the Senate on May 3, 1979 had described with great specificity that responsibility for the SSS resided in the Bureau of Engraving and Printing;

(e) when, over Appellant's objection to the misleading chronology involved, the Government was permitted to elicit trial testimony of a Federal Reserve official on the "ultimate" responsibility of the Federal Reserve in the SSS matter, in events which

occurred a year after Appellant's retirement; and when, in rebuttal argument the Government attorney improperly recalled this testimony to the jury and strongly implied a contemporary relationship to Appellant's letter of June 24, 1977 to the Federal Reserve in urging the jury to find Appellant's letter a crime;

(f) when, in spite of the officially prepared sworn statement of a Federal Reserve Governor, the recipient of Appellant's June 24, 1977 letter, stating Appellant's letter advised him that the Bureau was proceeding with the acquisition of the SSS equipmnet by lease-to-purchase financing and had proposed alternate financing to save the Government $14 million; and in spite of the grand jury testimony of the president of the ABN company, affirmed at trial, that the company was neither privy to nor did they have any financial interest in the matter of which method of financing was employed, the Govern-

ment attorneys charged in the indictment and preserved through their closing arguments to the jury that Appellant's communications with the Federal Reserve Governor on June 15 and June 24, 1977 were violations of 18 U.S.C. 208(a), in misapplication of the statute which specifically, and exclusively, governs actions of a federal employee in a particular matter in which a prospective employer has a financial interest;

(g) when, in the light of the foregoing, the District Court refused to give Appellant's requested theory of defense to the jury to illuminate the erroneous charges concerning Appellant's legitimate communications with the Federal Reserve and the Government's misapplication of the statute to an internal government funding consideration, a matter in which the company had no financial interest; and when, instead, the Trial Judge's instructions to the jury included the dates of June 15 and 24, 1977 as

dates on which the jury could find that Appellant "knowingly participated personally and substantially, in a proposal of the American Bank Note Company for a system to protect U.S. currency, knowing that the American Bank Note Company had a financial interest in the proposal"; and, when the Appellate Court affirmed the Trial Court's refusal as not a reversible error;

(h) when, in spite of the record actions above, the Government attorneys denied to the Appellate Court that it had ever been the Government's theory of prosecution that the Federal Reserve had responsibility for the SSS equipment for which they stated it had been their uniform position the Bureau of Engraving and Printing was soley responsible - while, at another point in their same brief, they asserted in continuing contradiction of the record evidence, "... appellant vigorously lobbied the Federal Reserve Board, which he regarded

as a potential source of purchase money, knowing that its concurrence with the method of acquisition was important toward bringing about the acquisition"; and when it is identified in the Government attorneys' post-trial description of the case, prepared by direction of the District Court for dissemination throughout government by the Office of Personnel Management, that they had continued to describe that Appellant urged the Federal Reserve's "buying the private company's proposed system", and that "he hoped the Federal Reserve would favorably consider the purchase of the equipment" - in marked contradiction of their denial to the Appellate Court;

(i) when, without permitting three of the seven persons indicated to have attended a meeting on June 21, 1977 to testify about the meeting during their grand jury appearances, and without calling a forth indicated participant before the grand jury, the Gov-

ernment attorneys used the solitary testimony of one witness, whose several sworn statements on the matter were visibly confused, contradictory, proven false by administrative records, and directly refuted by the affirmative testimony of another witness before the grand jury, not only to charge that Appellant had unlawfully attended the meeting, but also to charge Appellant with perjury for having denied this solitary testimony;

(j) when, in their admitted absence of particulars as to when, where, or with whom Appellant made the arrangements or conducted the negotiations for prospective employment alleged in the indictment, the Government attorneys proffered to the District Court and the Court of Appeals that they would prove Appellant's employment arrangement as well as his continuing involvement in equipping the office beyond November 1976, by the testimony of a witness, who would say

Appellant told him he would be a vice president of the American Bank Note Company; knowing as they made these assertions to the Courts that an eye-witness to Appellant's conversation with the witness had testified unequivocally before the grand jury that Appellant never made a statement even resembling that alleged by the witness; knowing, too, that the witness, who had been medically treated for chronic alcoholism as early as 1975, was then an abject, derelict alcoholic, who had been "propped up" by government agents in what the District Court described as an "extraordinary" manner, and whose several sworn statements in their possession were replete with crucial contradictions, material falsities, and massive confusion as to persons, times, and events; knowing, further that the witness had corroborated Appellant's consistent statements on material matters in some of his varied swearings, while in others he diametrically contradict-

ed himself; and knowing, particularly, that those statements of the witness which they had selected to accuse Appellant were incontrovertibly proven false by documentary evidence they possessed - correspondence between the witness and the person with whom the witness had clearly confused Appellant in transactions concerning the office in February 1977;

(k) when, in the light of the foregoing, the Government attorneys produced the witness at trial against Appellant, eliciting from him and permitting him to give without correction testimony to the jury against Appellant, which they knew from the documentary evidence in their hands was wholly false and confused (as was established from the witness' cross examination admissions from that documentary evidence); and when, in direct examination by the prosecutor, the witness denied, four times, that Appellant had made any statement to him concerning

future employment, the Government attorneys impeached his denial by two other swearings of the witness, as "substantive evidence" of his prior truthfulness , swearings which they knew contained crucial and material contradictions of the trial testimony they had permitted him to give before the jury;

(l) when, in the light of the above, during the Trial Court's due process deliberation on the defense motion to exclude the testimony of this witness, in their response to the Trial Judge's express and prolonged concern that justice was not being served by the Government's use of the testimony of this witness, the Government attorneys told the Trial Judge he had to assume the truth of the Government's evidence, and assured the Court of "our sincere and firm belief as to his credibility with respect to the things he testified about", and that, "if we reached the conclusion of any evidence we had that (his) testimony was patently

incredible, then we would have had a duty not to present him";

(m) when, in spite of the witness' crucial admissions in cross examination, and his direct examination denials of the statement attributed to him by the Government attorneys in their proffers to the Courts as proof of their charges against Appellant, the Government attorneys continued to tell the jury they should believe the witness, and continued to put forth his testimony to the Courts against Appellant - including telling the District Court that the documentary evidence "corroborated" the witness' testimony - the documentary evidence from which the witness admitted at trial that he had met with a person other than Appellant and had discussed with that person the specifics he had attributed to Appellant in direct examination ?

2. Did not the Appellate Court, in consideration of Appellant's documented

contentions of the injustice of the acts of the Government attorneys set out in 1. above, misapprehend the gravity of those acts from the indictment through the appeal procedure, when it construed that "Appellant's final assertion of reversible error is the prosecutor's alleged misconduct at Appellant's trial"; and, when the Court concluded, "We believe that Appellant's arguments of prosecutorial misconduct represent nothing more than an attack on the sufficiency of the evidence which we have found to be without merit"?

3. Did not the Appellate Court misapprehend significant points of fact and law when it construed the Government's indictment charges alleging Appellant's unlawful recommendations to the Federal Reserve, and their pre-trial and trial preservation of these charges in spite of their pre-indictment possession of compelling uncontroverted evidence of the falsity of their

charges, as well as their denial of this theory of prosecution to the Appellate Court, were only "relatively minor inconsistencies in the government's prosecution theory", and only a "slight confusion which evolved during trial with respect to which governmental agency was responsible for purchasing the SSS (and whether funding by the Federal Reserve Board and appellant's discussion thereof constituted personal and substantial participation" (Emphasis added); and when the Appellate Court concluded that on June 15, 21, and 24, 1977, Appellant "exercised conduct susceptible of belief as being 'substantial participation' as to the SSS acquisition" ?

4. Did not the Appellate Court's decision compound the Government's erroneous interpretation and use of the terms, "substantial participation", "particular matter", "recommendation", and "financial interest", in conflict with 18 U.S.C. 208(a)?

TABLE OF CONTENTS

Questions presented		1
Opinions below		15
Jurisdiction		15
Statute involved		16
Statement		16
Reasons for granting the writ		55
Conclusion		65(a)
Appendix A	Opinion of U.S. Court of Appeals, D.C.	66
Appendix B	Appellant's letter of May 10, 1977 to T. Gainor ...	79
Appendix C	T. Gainor's letter of June 6, 1977 to Appellant	82
Appendix D	Appellant's letter of May 17, 1977 to E.Weitzen ...	84
Appendix E	G. Transtrum's letter of Feb.17,1977 to C. Sharkey	87
Appendix F	Senate Statement of Gov. Coldwell, May 3, 1979 ..	90
Appendix G	Post-verdict Prosecution Version of CC 79-00380-01	94
Appendix H	Appellant's petition for hearing en banc, U.S. Court of Appeals	97
Appendix I	Court of Appeals' denial of Appellant's petition for hearing en banc	99
Appendix J	Appellant's letter of June 24, 1977 to Gov. Coldwell	101
Appendix K	Inspection Report on Transtrum's threat to "get" Appellant	107

OPINIONS BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Appendix A) has not yet been reported.

JURISDICTION

The decision of the U.S. Court of Appeals for the District of Columbia Circuit was entered on August 13, 1981. Petition for rehearing was duly filed on August 27, 1981, and was denied September 25, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE AND RULES INVOLVED

18 U.S.C. 208(a) provides in relevant part:

"(W)hoever, being an officer or employee of the executive branch of the United States Government ... participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a ... determination, contract ... controversy, or other particular matter in which, to his knowledge ... any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest -

Shall be fined not more than $10,000 or imprisoned not more than two years, or both."

STATEMENT

In this case, which came to trial on

July 21, 1980, in the District of Columbia District Court, the record shows that Appellant's acknowledged high interest in a security signature system for U.S. currency was not indigenous to, nor was it initiated by the American Bank Note Company's proposal for such a system.

Appellant, a 35½ year career employee of the Bureau of Engraving and Printing and Director of the Bureau for 10 years, had as an active career objective the achievment of a high-level authentication and counterfeit deterrent system for U.S. currency and other government securities.

In April 1970 Appellant formally proposed to the Federal Reserve Board a personal concept for automating the then all-manual processing of currency in the Federal Reserve banks, permitting through the use of such high-speed equipment the utilization of a currency authentication technique to be effected during the Bureau's manu-

facture of the currency, employing unique phosphors as security signature materials. In the years thereafter, Appellant and members of his staff, worked with the Federal Reserve in their respective development of the processing machinery and the security signature system. The signature system was identified as GTEL (General Telephone & Electric Labratories).

The American Bank Note Company(ABN) is the nearest private sector counterpart of the Bureau, a producer of international national currencies and securities for over 100 years (including United States currency and postage stamps before the Bureau's founding). The company had an historical relationship with the Bureau in technical interchange, and produced securities such as Food Coupons and Gas Ration Coupons as a sub-contractor for the Bureau.

In September 1976 ABN invited Appellant as the Bureau Director to inspect a new

system of currency and securities authentication, utilizing a variation of the technology employed for top-secret Air Force use. Appellant's favorable appraisal, and subsequently that of the Bureau's Assistant Director for Research and Engineering, led to a series of arranged demonstrations by ABN and technical discussions on a need-to-know basis with Bureau staff and those Federal Reserve officials with whom the Bureau had been working in conjunction with the GTEL system. It was not made known to the American Bank Note Company that in the period of September 1976 difficulties were being experienced with the GTEL signature system which were preventing the Bureau's achieving desired printing results, thereby delaying the availability of authenticated currency for the processing machines the Federal Reserve were bringing on line. It was the consensus of all participants in the ABN demonstrations and discussions that the company's

Security Signature System (SSS) was significantly superior to the GTEL, not only in overcoming the encountered difficulties, but also permitting a far more technically sophisticated level of anti-counterfeit security. The Federal Reserve participants agreed the SSS would also be compatible with their high-speed currency processing project.

On April 21, 1977, it was formally agreed by Appellant as Director of the Bureau, and Thomas Gainor, Chairman of the Federal Reserve Subcommittee on Currency and Coin, that consistent with the Bureau's mission responsibility for manufacture of U.S. currency with the greatest deterrence to counterfeiting, the decision on the acceptability of the proposed system and the acquisition of the necessary machinery and equipment to be installed in the Bureau, was properly the responsibility of the Bureau. As agreed, Appellant's letter of May 10, 1977 to Mr. Gainor (Appendix B), restated

their mutual understanding of responsibility and advised Mr. Gainor of the Bureau's formal decision to accept the proposed system of ABN. Mr. Gainor's letter of June 6, 1977 to Appellant (Appendix C), expressed his committee's support of the Bureau's decision.

On May 17, 1977, Appellant's letter to Edward Weitzen, Chairman of the Board, ABN (Appendix D), advised him of the Bureau decision to acquire the SSS equipment and requested that cost information for this acquisition be sent to the Bureau's Procurement Officer, Jules Rieder.

On June 1, 1977, at the close of a meeting at the Department of the Treasury, Appellant advised Under Secretary Bette Anderson of his spontaneous decision to retire as of July 1, 1977. On Mrs. Anderson's persuasion Appellant identified his decision was prompted by continuing unsatisfactory relations with the then new Treas-

ury administration personnel, including Treasury's negative response in the meeting of that day to the Bureau's updated assessed needs for additional space which Appellant had urged since 1968. These circumstances were corroborated by the affidavit of Mrs. Anderson taken for trial use as a Government witness pending her leaving the country. Mrs. Anderson was not called by the Government nor was her affidavit introduced.

Appellant announced his retirement decision in a Bureau staff meeting on June 3, 1977. Shortly thereafter, Chairman Weitzen of ABN called to say he had heard of Appellant's decision through ABN personnel in the Bureau and asked to meet with Appellant. Appellant met with Weitzen in New York on June 10, 1977, and agreed, after discussof alternatives, to accept post-retirement employment with ABN in a subsidiary operation to be housed in the new office ABN had under construction in Crystal City, for which a

proposed employment contract would be forthcoming.

The Government charged in its indictment that in the period up to June 10, 1977, Appellant had an arrangement and was negotiating for prospective employment with ABN. In the admitted absence of Court-ordered particulars of the arrangement or negotiations, the Government attorneys proffered to the District Court they would prove this charge by the testimony of Gary Transtrum, who would say Appellant told him he would be a vice president of ABN.

The District Court dismissed the conflict of interest charge for lack of particulars. On April 16, 1980 the Court of Appeals reversed the dismissal.

Appellant testified that he met Gary Transtrum on two occasions in November 1976, when Transtrum was employed by the Charles E. Smith realty company.

In approximately October 1976, Weitzen

advised Appellant that ABN was planning to open a Washington office, and asked Appellant if he would advise him of any available space in the area. Appellant agreed as a courtesy to their long standing relationship and obtained from Weitzen a rough spontaneous sketch of his desired office layout. On November 5, 1976 Mr. Transtrum wrote to Appellant in response to Appellant's telephone inquiry on space availability, and identified three sites in near-by Crystal City which he suggested for inspection. Approximately a week thereafter, Appellant, accompanied by his Staff Assistant, Mrs. Kirk, met Transtrum in Crystal City and was shown available space in a building under construction. Appellant explained he was looking for another party and would advise them of this site. Mr. Transtrum suggested it would be prudent to meet with the Smith Co. space planner to assure the suitability of the space for the

intended use. After several follow-up calls from Transtrum Appellant agreed to meet the space planner, Jeffrey Ishman, on November 23, 1976. From a brochure floor plan he received from Transtrum in the initial meeting, Appellant had prepared a hand-drawn refinement of the sketch provided by Weitzen for the anticipated suitability discussion. Such discussion did not ensue in the brief meeting during which Mr. Ishman merely sketched in the blank drawing his suggestions for furniture arrangement. Appellant testified that he had no contact with either Mr. Ishman or Mr. Transtrum, nor with any other representative of the Charles E. Smith Company after that date.

Appellant subsequently advised Mr. Weitzen of the location of the available space and gave him Transtum's name and phone number. Weitzen thanked Appellant for his efforts and stated he would assign someone from the company to follow-up. Appellant

had no further discussion with Weitzen concerning his planned office until June 10,1977, after he had announced his decision to retire.

The Government attorneys proffered to the District Court on October 11, 1979, and to the Appellate Court on February 15, 1980, that they would prove Appellant's arrangement by the testimony of Gary Transtrum,which would also prove Appellant's continuing involvement in equipping the office.

The record shows that Transtrum is an abject alcoholic, unemployed, in derelict condition. Transtrum told the grand jury he did not have an alcohol abuse problem before 1978. Medical records show his chronic alcoholism since at least 1975. The record shows his arrests for theft of wine from supermarkets, and that he told a government agent he would "get" Appellant by his testimony (Appendix K). Transtrum made five sworn statements prior to the indictment: an October 1978 affidavit for Walter Fialkewicz,

a Senate Subcommittee on Investigations investigator; a November 1978 affidavit for investigators of the Treasury Inspector General (which Transtrum told the grand jury he had reviewed and found proper); an affidavit of April 30, 1979 for the Senate Subcommittee on Investigations; and his testimony before the Subcommittee on May 1, 1979 from that affidavit; and, his grand jury testimony.

In addition to numerous inconsistencies and errors on times, places, persons, and events, Transtrum's statements were materially contradictory in testimony crucial to the charge against Appellant.

In October 1978 Transtrum's affidavit showed he was told by Fialkewicz that Transtrum's February 9, 1977 Lease Worksheet was the earliest document in the files: Transtrum swore he met Appellant on that day, and that he met Appellant as often as four times. He swore he had never met Charles Sharkey of

ABN. Transtrum's February 17, 1977 letter to Sharkey identifies their significant meeting of February 11, 1977, and their substantive participation in equipping the office (Appendix E).

Walter Fialkewicz stated in an FBi interview of June 6, 1980, that when the Subcommittee obtained additional documents they found discrepancies in Transtrum's October 1978 affidavit and that he returned to Transtrum for a correcting affidavit - which Fialkewicz stated was not available and "may have been destroyed".

In October 1978, when shown files on the American Bank Note Company, Transtrum told Fialkewicz Appellant said he would be a vice president of American Bank Note Co. His November 1978 affidavit states that he was asked about ABN Development Corporation, and he swore that Appellant told him he was to be a vice president of ABN Development

Corporation. (Investigators' notes on this interview obtained by Appellant's post-trial Freedom of Information request to Treasury show, among the variances in the two agents' allegedly spontaneous recording of the witness' observations, the notation that Appellant made no statement concerning his future employment.) These hand-written notes were not furnished to Appellant by the Government attorneys in the Court-ordered discovery material.

In his November 1978 affidavit Transtrum swore he met Appellant only twice, at the new building site and at the office of Jeffrey Ishman, the space planner, corroborating Appellant's consistent statements.

Before the grand jury Transtrum also testified he only met Appellant twice in November 1976, again corroborating Appellant's statements. (At trial the Government attorneys elicited Transtrum's testimony that he met Appellant a third time in February 1977.)

Transtrum told the grand jury Appellant met with the space planners "several times". The documentary records of Jeffrey Ishman show that the meeting of November 23, 1976 was the only time Appellant met with Ishman, as Appellant consistently stated.

Walter Fialkewicz stated in his FBI interview, June 6, 1980, that on each day for five days before the Senate Open Hearing on May 1, 1979, he went to Transtrum's home at 5 A.M., stayed with him while he bathed, breakfasted, and walked his dog, to assure his sober appearance at the Hearing. Fialkewicz also stated that during these five days the Subcommittee attorneys "assisted" Transtrum in the preparation of his April 30,1979 affidavit.

In his April 30, 1979 affidavit Transtrum, for the first time, fixed the number of his meetings with Appellant as three, and in his Senate testimony the following day fixed the time of the alleged third meeting

as the first week in February 1977. He also described a number of blueprints or drawings on which he alleged Appellant made changes and which he (Transtrum) mailed to Appellant and sent to Jeffrey Ishman for corrected drawings. In response to Senator questioning Transtrum itemized specific changes and additions to the office arrangement which he swore were those discussed by Appellant with him. The record shows no drawing existed with any notation by Appellant, nor were there any drawings corrected by Ishman as Transtrum testified, nor were there any forwarding correspondence for drawings he alleged he mailed to Appellant, in the otherwise complete files of the Charles E. Smith Company.

Most crucially, the specific items identified by Transtrum in his Senate testimony as discussed with Appellant were among those items enumerated in Transtrum's letter of February 17, 1977 to Charles Sharkey (App-

endix E) identifying their meeting of February 11, 1977 and the substantial changes discussed - and enclosing a drawing with those changes delineated in Transtrum's hand-writing - a drawing he told the Senate he prepared to reflect his meeting with Appellant. Transtrum's affidavit of April 30, 1977, prepared with the assistance of the Subcommittee attorneys, omitted any reference to Transtrum's February 17th letter to Sharkey - which documented the falsity of Transtrum's allegations on his alleged third meeting with Appellant. (The availability of the letter to the Subcommittee was identified by Fialkewicz's reference to it for another purpose in his testimony before the Senate Open Hearing).

At trial the Government attorneys elicited without correction Transtrum's testimony which paralleled his April 30, 1979 affidavit in preference to his other statements, and alleged a third meeting with Appellant

in February 1977 - contrary to the documentary evidence of Transtrum's February 17th letter to Sharkey which they possessed. (In cross examination Transtrum admitted from the February 17th letter and other documentary evidence that he met with Sharkey and "not with Mr. Conlon", and that he discussed with Sharkey and "not Mr. Conlon" the specific change items he had attributed to Appellant in direct examination).

In direct examination, Transtrum denied, in four separate efforts by the prosecutor, that Appellant had made any statement to him concerning future employment - and stated his grand jury testimony was the truth "as I saw it then". The Government attorneys impeached his denial by refernce to his October 1978 affidavit (in which Transtrum swore he had never met Sharkey), and to his grand jury testimony (in which he had corroborated Appellant's statements of only two meetings in November 1976 - in contrast to his direct

examination trial testimony), and told the Court these swearings were "substantive evidence" of Transtum's prior truthfulness.

The Government attorneys opposed Appellant's trial motion to exclude the testimony of Gary Transtrum. When the Trial Judge in prolonged discussion expressed his specific concern that justice was not being served by the Government's use of Transtrum's testimony, the Government attorneys told the Court that they believed "without equivocation or qualification" that justice was being served by their use of his testimony; that they were fulfilling the Government's responsibility "to present testimony that we believe to be truthful testimony to the jury, and to do justice in a case"; that the "Trial Court must assume the truth of the Government's evidence"; that they had "sincere and firm belief as to his credibility with respect to the things he testified about"; and, "if we reached the conclusion of any evidence

that we had that Mr. Transtrum's testimony was patently incredible, then we would have had a duty not to present him".

Appellant's only acknowledged "involvement" in the office arrangement was a pre-lunch conversation with Charles Sharkey on February 25, 1977, in a visit by Sharkey to Washington (Mr. Sharkey regularly represented ABN with government agencies in Washington). Sharkey requested Appellant's help with choices he had to make in follow-up of his meeting with Transtrum on February 11, 1977 as outlined in Transtrum's letter of February 17, 1977 to Sharkey. With the aid of the Bureau's engineer, Mr. Sennett, Appellant summarized on the back of a copy of Transtrum's letter to Sharkey, changes consisting of the relocation of a corridor for space saving, the associated switching of doors, the addition of a security entrance lock, and a suggested "safe color" for the lavatory fixtures, changes Jeffrey Ishman

testified were "minor". The Government attorneys proposed this was evidence of Appellant's "substantial involvement" in "fitting and decorating the office in such subjective and personal aspects as color selection and location of locks". Among the documents in the possession of the Government attorneys were an affidavit of Ronald Miller of the Hitt Decorating Company, and an estimate by Edgar Jones of the Charles E. Smith Company, which identify that in late June and in July 1977, after Appellant's acknowledged agreement to accept ABN employment in the office they had under construction, Appellant had arranged for an approximate $8000 in decorating changes by the Hitt Company - including covering all painted walls with vinyl wall covering, and the replacement of all painted doors in the office, thereby significantly altering the painted decoration Sharkey had approved with the Smith Company on May 31, 1977.

The Government produced no other testimony or evidence to show involvement by Appellant in the office matter prior to his announced retirement. The Government produced no other testimony or evidence to show an arrangement or negotiations for employment by Appellant before June 10, 1977.

The Government charged in a particular of the indictment that after his acknowledged arrangement for postretirement employment with ABN on June 10, 1977, Appellant unlawfully attended a meeting on June 21, 1977, when ABN's formal proposal was delivered to the Bureau, and that he personally and substantially participated in the meeting.

Seven persons were identified on a desk calendar of Mrs. Joanne Sims, Secretary to the Bureau's Assistant Director, Administration, Seymour Berry, as related to a meeting at 9 A.M. on June 21, 1977, at which time Mr. D'Amato, President of ABN, delivered the company proposal addressed to Mr. Rieder,

the Bureau's Procurement Officer. Mrs. Sims' official time card for June 21, 1977 showed that Mrs. Sims took one hour of annual leave to register her daughter in school on the morning of June 21, 1977, and was not in the Bureau at 9 A.M. on that date.

Appellant testified to the grand jury that he was present in Mr. Berry's office on another matter when Mr. D'Amato arrived, followed shortly by Mr. Rieder and other Bureau staff members. After greeting Mr. D'Amato and ascertaining the purpose of his visit, Appellant excused himself to attend to other business. Noting that Mr. Rieder (who, as a non-technician, had not attended the need-to-know demonstrations of the SSS), was outspokenly unaware of the subject, Appellant asked Rieder to accompany him to Appellant's office where he briefly demonstrated on a small electronic device the principle of detecting secret materials implanted in U.S. currency. Mr. Rieder then left to rejoin the

meeting, which unknown to Appellant, had removed to the staff conference room.

Mr. D'Amato testified to the grand jury that Appellant had opened the meeting and then left.

Messrs. Berry, Prescott, and Sennett, Assistant Directors of the Bureau, appeared before the grand jury, but were not asked about the meeting of June 21, 1977.

Mr. Charles Holmgren, Chief of the Bureau's Office of Research, was not called before the grand jury.

Mrs. Joanne Sims appeared before the grand jury but was not asked about the meeting of June 21, 1977, nor the basis for her calendar notation on that meeting.

Jules Rieder, the Bureau's Procurement Officer to whom the ABN proposal was addressed, was the only witness to testify to the grand jury that Appellant attended the meeting. Mr. Rieder also testified that AFTER the meeting he was in Mr. Berry's office

meeting with Mr. Berry, when Appellant came in and gave him a demonstration on secret ingredients in currency. When asked if Mr. Berry had been in the conference room meeting, Rieder said that if he had not been he should have, but that if he had been at the meeting then he must have come into his office afterwards. Rieder also told the grand jury that Mr. Sennett was at the meeting and recounted specific statements he alleged were made by Sennett. When asked later, specifically, if Mr. Sennett was at the meeting, Rieder testified that he could not be sure.

In other sworn statements of Rieder in the possession of the Government attorneys, Rieder could not remember if Mr. D'Amato was at the meeting (Mr. D'Amato's letter of June 22, 1977 to Rieder forwarded cost information requested by Rieder at the meeting). In another statement, when Rieder had been shown D'Amato's June 22 letter to him, Mr. Rieder

remembered that D'Amato attended the meeting. (At trial Rieder could not recall if D'Amato was at the meeting - even when shown the letter of June 22, 1977 to him from D'Amato). In one statement Rieder swore that after the meeting he took the proposal to the office of his assistant, Mr. Robert Smith, and discussed the proposal with Mr. Smith. It was established that after the meeting the proposal had been locked in a Bureau security vault, and that Bureau administrative records show that on June 21, 1977 Mr. Smith was on leave (which Rieder later acknowledged).

On the basis of Jules Rieder's solitary testimony, refuted by another witness, the Government attorneys not only charged Appellant with unlawfully attending the meeting, but also charged him with perjury because he had denied attending the meeting.

At trial Mr. D'Amato affirmed his grand jury testimony that Appellant did not attend the meeting. Mr. Berry testified to no re-

call of Appellant's having been at the meeting which he stated originated in his office. Mr. Prescott testified he had no recall of Appellant's having been at the meeting. Mr. Rieder testified he was confused about the events of the meeting.

The Government charged in the indictment that on June 15 and June 24, 1977, Appellant violated 18 U.S.C. 208(a) by recommending ABN's proposal to the Federal Reserve Board.

Prior to the indictment, the principal Federal Reserve officials involved had testified that the Federal Reserve had no responsibility for the acceptance or the acquisition of ABN's proposed equipment, and that this responsibility was clearly that of the Bureau of Engraving and Printing. In addition, it was incontrovertibly established by this testimony, corroborated by the documentary evidence of official correspondence,

that the Bureau of Engraving and Printing had made the decision to acquire the SSS equipment on April 21, 1977, and had initiated procurement procedures for this acquisition on May 17, 1977.

The following testimony and evidence substantiating these facts were in the hands of the Government attorneys prior to the indictment:

Affidavit of Thomas Gainor, Chairman of the Federal Reserve Subcommittee on Currency and Coin, December 15, 1978

Testimony of Thomas Gainor before the Senate Open Hearing, May 1, 1979

Grand Jury testimony of Thomas Gainor, March 16, 1979

Affidavit of John Stoides, Federal Reserve Vice President and Project Engineer High-Speed Currency Processing Project, December 11, 1978

Report, sworn statement of John Stoides, January 25, 1979

Grand Jury testimony of John Stoides, March 16, 1979

Grand Jury testimony of John Stoides, June 21, 1979

FBI interview of Governor Philip Coldwell, Federal Reserve Board, March 24, 1979

Statement of Governor Coldwell to Senate Subcommittee on Investigations, May 3, 1979

FBI interview of Governor Coldwell, July 13, 1979

In addition, the Government attorneys were in possession of Appellant's official memorandum to the Secretary of the Treasury, May 31, 1977, in which Appellant addressed the Bureau of Engraving and Printing's responsibility to prepare authenticated currency and advised the Secretary that the Bureau was "currently acquiring the equipment necessary for appropriate preparation of the currency".

Notwithstanding the voluminous, compelling evidence, the Government charged that in a telephone conversation on June 15, 1977, Appellant had recommended to Governor Coldwell that the Federal Reserve consider the company's proposal. Governor Coldwell had not appeared before the Grand Jury, so it is

unlikely the grand jury was able to consider Coldwell's statements of March 24, 1979, May 3, 1979, or July 13, 1979, to assess the validity of this charge on an alleged statement of Governor Coldwell. In the Court-ordered discovery material provided Appellant, no statement by Coldwell appeared which resembled the Government's charge. On the contrary, Coldwell's officially prepared sworn statement of May 3, 1979 for the Senate specifically addressed the respective responsibilities of the Bureau and the Federal Reserve and identified the Bureau was responsible for the currency authentication equipment. Additionally, Coldwell identified in his July 13, 1979 statement that "During this telephone call Director Conlon informed Governor Coldwell that he was leaving BEP and could not follow through with the SSS ..."

Similarly, Governor Coldwell, the recipient of Appellant's June 24, 1977 letter, corroborated Appellant's description of the

intent and purpose of that letter in his May 3, 1979 statement:

> "On June 24, Mr. Conlon advised me that the Bureau intended to proceed with acquiring the SSS but would have to do so under a lease to purchase agreement, which would significantly increase the cost of Federal Reserve notes. Mr. Conlon then suggested that the interest charges connected with a lease to purchase agreement and overhead charges totaling $14 million could be avoided if the Federal Reserve would be willing to advance funds for the direct purchase of the equipment." (Appendix F)

Coldwell's clear understanding that Appellant's letter of June 24, 1977 concerned the Bureau's acquisition of the equipment rather than a recommendation that the Federal Reserve buy or acquire it, was available to the Government attorneys in Coldwell's FBI interview dated March 24, 1979.

> "Coldwell after examination of the letter, stated it was sent to him by Conlon and dealt with the matter of the lump sum payment as opposed to the installment payment of the machinery being purchased by BEP."

Nevertheless, in their opposition to Appellant's pre-trial efforts to strike the

erroneous charges of Appellant's recommending the SSS equipment to the Federal Reserve, the Government attorneys told the District Court, "... the June 15th telephone call and the June 24th letter were parts of the defendant's unlawful participation in the decision-making process. ...In fact, more than evidence, they are themselves substantial parts of the alleged offense."

Mr. Gainor and Mr. Stoides affirmatively restated their previous testimony that the Federal Reserve had no responsibility for acceptance or acquisition of the SSS, and that a "final, definite decision" had been made by the Bureau on April 21, 1977. After Coldwell's hesitant direct testimony that his "best recollection" of the June 15th phone call was "that Mr. Conlon informed me he was going to be leaving the Bureau", and, "The only thing I can remember is that he did bring up the possibility of the Federal Res-

erve buying the equipment", and, "Just that he hoped the Federal Reserve would consider favorably the purchase of the equipment" - which the prosecutor accepted without correction, Coldwell, in cross examination, affirmed his officially prepared sworn statement to the Senate on May 3, 1979, as his current testimony.

The Government attorneys recalled Coldwell's testimony to tell the jury that Appellant had urged the Federal Reserve "to buy" and "to purchase" the equipment; and characterized Appellant's June 24, 1977 letter as "a strong recommendation for the acquisition of the equipment" by the Federal Reserve.

Post-trial, at the District Court's direction, the Government attorneys prepared a "Prosecution Version of CC# 79-00380-01 of the U.S. District Court for the District of Columbia", for use by the Office of Personnel Management in dissemination to feder-

al employees. Therein, the Government attorneys described, "On June 15, 1977, during a telephone conversation with the Governor of the Federal Reserve System, the defendant reportedly brought up the possibility of the Federal Reserve buying the private company's proposed system. The defendant reportedly stated to the Governor that he hoped that the Federal Reserve System would favorably consider the purchase of the equipment"; and, "Finally, on June 24, 1977, the defendant sent a letter to the Federal Reserve System Governor in which he highly recommended the private company's system and recommended a method of acquiring it and funding it."

The Government attorneys denied to the Appellate Court that this was the Government's theory of prosecution:

> "Thus, contrary to appellant's representations, it was never the government's theory of prosecution that the responsibility and authority for the acquisition of the security signature system belonged to the Federal Reserve Board in June 1977.To

> the contrary, the government has uniformly maintained that the Federal Reserve System was a potential source of funds for the acquisition of the system and that no contract for the acquisition had been executed at the time of appellant's actions in June 1977. Although the Federal Reserve System's concurrence was - as appellant recognized 1/ - important, the ultimate authority as to whether and how the system was to be purchased rested with the Bureau."

The Government attorneys also told the Appellante Court, "At that time (June 1977) there was no contract with ABN Co. and no assurance there ever would be a contract. Despite this and appellant's connection with ABN Co., appellant vigorously lobbied the Federal Reserve Board, which he regarded as a potential source of purchase money, knowing that its concurrence with the method of acquisition was important toward bringing about the acquisition."

1/ Appellant identified in his Reply Brief that the Government attorneys had erroneously cited Appellant's reference to a matter other than the SSS.

Mr. Gainor and Mr. Stoides identified at several places in their testimonies that the Subcommittee on Currency and Coin had fully concurred in and supported the Bureau's decision to acquire the equipment on April 21, 1977. This concurrence is documented in Mr. Gainor's letter of June 6, 1977 to Appellant in his capacity as Chairman of the Committee (Appendix C). Mr. Gainor and Mr. Stoides testified at trial that in the period of June 1977 the Federal Reserve Board had no responsibility in this matter and there was no requirement for the Subcomm - ittee to make a report to the Board. Mr. Gainor's and Mr. Stoides' testimony were not controverted, and no testimony or evidence was produced to show any requirement for any concurrence by the Board for authorized procurement actions taken by the Bureau of Engraving and Printing in its responsibility to determine "whether and how the system was to be purchased", as noted by the Government.

Governor Coldwell, the recipient of Appellant's June 24, 1977 letter, stated his understanding that the Bureau was proceeding to purchase the equipment by lease to purchase. The letter had identified the Bureau's successful use of lease-to-purchase financing for major currency manufacturing equipment. Appellant testified the Bureau had used this available method of financing to acquire as much as $13.5 million in equipment. Mr. Schneider, the Bureau's Financial Manager, testified that lease-to-purchase was an available method for the Bureau's acquisition of equipment, and that the Bureau's cash position was not a factor if the Bureau wished to acquire equipment in the negotiations process. Neither Appellant's nor Mr. Schneider's testimony was controverted. No evidence was produced to show that if the Federal Reserve had not accepted Appellant's June 24, 1977 suggested financial alternative to save $14 million, the Bureau would have been unable

to successfully acquire the equipment by the lease-to-purchase method as planned.

The Government attorneys told the Appellate Court that their use of William Wallace's testimony concerning responsibility the Federal Reserve had a year after Appellant's retirement was proper because, "the evidence was highly relevant to show that previously there had been no contract to purchase the ABN Co. system nor any commitment of the United States Government to buy it." Appellant's letter of May 17, 1977 to Chairman Weitzen of ABN, identified the Bureau's decision of April 21, 1977 to acquire the equipment, and requested cost information for the acquisition be sent to the Bureau's procurement officer, initiating procurement procedures for a sole source acquisition. No testimony or evidence was produced to show it was improbable this procedure would result in a contract. No testimony or evidence was produced to show that the determination on

whether or not a contract would ensue from this legitimate procurement procedure depended in any way on any approval, concurrence, or any other action by the Federal Reserve Board. Governor Coldwell's officially prepared sworn statement of May 3, 1979 to the Senate, identified that the responsibilities alluded to in Mr. Wallace's testimony did not evolve until June 1978, one year after Appellant's decision to retire(Appendix F).

REASONS FOR GRANTING THE WRIT

1. In this case, Appellant's Constitutional guarantees have been grieviously abrogated, from indictment through trial, in an extraordinarily multi-faceted miscarriage of justice.

The Appellate Court has escalated this injustice:

(a) by sanctioning abundently document-

ed acts of prosecutorial misconduct, including, the creation of false charges with no reasonable probable cause, contrary to documentary evidence and compelling testimony in the prosecutor's possession, and with the willful use of known perjurious and non-credible testimony; the unjust compromise of the Courts' due process deliberation of Appellant's petitions by known false representations to the Courts; and, the willful false presentation of testimony and evidence to the jury;

(b) by excusing as "slight confusion" and "minor inconsistencies" the Government's persistent erroneous charges, obfuscations, and misapplication of the statute, from the indictment through the appeal procedure;

(c) by finding no reversible error in the District Court's refusal to give Appellant's requested theory of defense to the jury to illuminate these confusions, inconsistencies, erroneous charges, and misapplication

of the statute.

(d) by accepting the Government's incongruous denial of their theory of prosecution, in spite of the language of the particulars of the indictment, and the abundent record evidence of the Government attorneys' specific and repeated erroneous charges which clearly demonstrated their active use of that theory against Appellant before the jury and the Courts;

(e) by finding, that on June 15 and June 24, 1977, Appellant "exercised conduct susceptible of belief as being 'substantial participation' as to the SSS adoption" - which was not the charge made against Appellant - according to the Government's denial to the Appellate Court that the Government had ever claimed the Federal Reserve had responsibility for the acquisition of the SSS equipment, and their assurance to the Appellate Court that the Government had uniformly maintained "the ultimate authority

as to whether and how the system was to be purchased rested with the Bureau" (notwithstanding the overwhelming documented evidence that the decision to adopt the system had been made by the Bureau on April 21, 1977).

The Appellate Court's incorrect conclusions in this case have not only perpetuated the instant injustice, but have also created serious precedents towards further encouraged abuse of the Constitutional rights of an accused by prosecutors recreant to their obligations. 1/

The exercise of this Court's power of supervision is necessary to correct these wrongs and the precedents set, particularly

1/ In response to Appellant's Complaint of Prosecutorial Misconduct filed on December 24, 1980 with the Office of Professional Responsibility, Department of Justice, the OPR stated: "The issues you raise are most appropriately considered in the judicial process and in the event of a Court determination of attorney misconduct, we will consider the matter at that time."

at this time when there is an ongoing enlargement of Inspector General functions throughout government, with publicized emphasis on the "Junkyard Dog" philosophy in investigatory procedures.

2. The Supreme Court's intervention is especially necessary in this case because of the serious obfuscation of the intent and scope of the statute, 18 U.S.C. 208(a), which has resulted from the Appellate Court's acceptance of the Government's erroneous interpretations and application of the language of the statute, which will unquestionably result in burdening the adjudication of future actions under 18 U.S.C. 208(a).

There have been several recent expressions of judicial concern for the potential injustice of improper interpretations, too broad reading, and the vagueness of the language of the statute: District Court Judge Louis Oberdorfer in dismissing the indictment

in Appellant's case (Memorandum filed October 26, 1979; United States v. Conlon, D.C. No. 79-380); District Court Judge John H. Pratt, in imposing a $500 fine in a defendant's nolo contendere in an associated case presented by the same Government attorneys presenting this case, (United States v. Sennett, D.C. No. 79-381, September 26, 1979); and, Appellate Senior Judge Dumbauld, in dissenting opinion, United States v. Irons, No. 80-1478, (7th Cir. February 4, 1981). In the latter case the majority opinion cited United States v. Conlon, No. 79-2283 (D.C. Cir., April 19, 1980), which reversed Judge Oberdorfer's dismissal of Appellant's indictment, as precedent for a broad reading of the statute.

In this case, the Government's ambiguity, distortion, and obfuscation of the common-usage terms "to buy", "to purchase", and "to acquire", in conjunction with the more obtuse terms "to decide", "to recommend",

"decision-making process", "particular matter", "substantial participation", and, "financial interest" - which the Government now represents were not intended to allege that Appellant was seeking the Federal Reserve's exercise of a responsibility the Government now agrees it did not have, were misleading to Appellant (if not to the jury and to the Courts), and deprived Appellant of the due process right to prepare an adequate defense against clear charges, in a jury trial the Government insisted Appellant must have.

Since the Government's present description of its theory of prosecution has been accepted by the Appellate Court, it stands that the Department of Justice interprets that 18 U.S.C. 208(a) precludes as "substantial participation" any activity in which the "matter" of a proposal, contract, or the like, is discussed, orally or in writing, whether or not subordinate to another principal

matter which was the subject or catalyst for the discussion, and regardless of whether the discussion is not designed for any decision on the proposal, contract, or other matter per se, and is not intended to and does not have an impact on the financial interest of the organization involved in the proposal, contract, or the like. The Appellate Court has upheld this interpretation in this case, regarding the Government's charges on June 15, and 24, 1977.

Further, in the Government's charge concerning the alleged telephone conversation of June 15, 1977, based on testimony of a witness who had not appeared before the grand jury to permit assessment of his exculpatory versions of the call in sworn statements, and in the absence of any discovery material to Appellant showing a reasonable-cause basis for the charge, the Government has interpreted 18 U.S.C. 208(a) to support as "substantial participation" a telephone call - about

which the witness' "best recollection" was that the purpose of the call was to advise him of Appellant's retirement, and about which the witness could only add in further questioning, "The only thing I can remember is that he did bring up the possibility of the Federal Reserve buying the equipment", and, "Just that he hoped the Federal Reserve would favorably consider the purchase of the equipment."

The Appellate Court has upheld that this was an act of substantial participation, and in spite of the Government's present theory description, that on June 15, 1977 Appellant "exercised conduct susceptible of belief as being 'substantial participation' as to the SSS adoption". (Emphasis added).

Finally, in its charge concerning Appellant's June 24, 1977 letter to Governor Coldwell, the Government charged this was an act of Appellant's substantial participation in a particular matter in which ABN had a

financial interest. The indictment describes the company's "proposal" as the particular matter in which ABN had a financial interest.

In its "Memorandum about the Meaning of the Term 'Financial Interest' Used in 18 U.S.C. 208(a)", however, the Government described that American Bank Note Company's financial interest consisted of "the business with the federal government which would have resulted from the acceptance of its proposal by the federal government", and, "the prospect of additional business stemming from the enhanced prestige of the company resulting from the acceptance of its proposal by the federal government". (Emphasis added)

In view of the Government's assertion to the Appellate Court that "it was never the government's theory of prosecution that the responsibility and authority for acquisition of the security signature system belonged to the Federal Reserve Board", Appellant's letter of June 24, 1977 to Governor Coldwell of the

Federal Reserve Board could not have been seeking the Federal Reserve's "acceptance" of ABN's proposal. It remains, therefore, that the Government interprets Appellant's written suggestion that - as an alternative to the Bureau's planned use of lease-to-purchase financing to acquire the equipment - the Bureau's use of advanced Federal Reserve funds would save the Government $14 million, to be a criminal violation of 18 U.S.C.208(a) because the letter contained subsidiary, explanatory discussion of the ABN (proposal) equipment the Bureau was proceeding to acquire.

The Appellate Court upheld this interpretation in finding that on June 24, 1977, Appellant "exercised conduct susceptible of belief as being 'substantial participation' as to the SSS adoption". (Emphasis added).

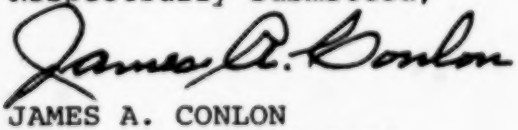
The parameters of reasonable interpretation of "substantial participation", and "particular matters" entailing "financial interst" as constructed in 18 U..S.C. 208(a)

have not been construed by this Court and should be finally in view of the high potential for erroneous application of the statute illuminated by this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,



JAMES A. CONLON
6605 Lee Chapel Road
Burke, Virginia 22015
Pro Se

CERTIFICATE OF SERVICE

This is to certify that the Solicitor General, Department of Justice, has been served with three copies of the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, by mailing copies thereof by Certified Mail to: Solicitor General, Department of Justice, Washington, D.C. 20530; and, that G. Allen Carver, Attorney, Public Integrity Section, Criminal Division, Department of Justice, has been served with three copies of the foregoing PETITION by mailing copies thereof by Certified Mail to the following address: P.O. Box 50168, F Street Station, Washington, D.C. 20004.

James A. Lanlon

11-24-81

APPENDIX A

UNITED STATES COURT OF APPEALS
for the District of Columbia

No. 80-2230

United States of America

v.

James A. Conlon, Appellant

Appeal from the United States District Court for the District of Columbia

(D.C. Criminal No. 78-00380)

Argued February 19, 1981

Decided August 13, 1981

Before: WILKEY and MIKVA, Circuit Judges and GORDON, Senior District Judge for the Western District of Kentucky

James R. Stoner, with whom William M. Hoiles was on the brief, for Appellant.

G. Allen Carver, Jr., with whom Robert J. Erickson was on the brief, Attorneys, Department of Justice, for Appellee.

Opinion for the Court filed by Senior District Judge Gordon.

GORDON, Senior District Judge: This appeal follows appellant-defendant's trial and conviction of a violation of Title 18 U.S.C. 208(a). 1/ omitted

A civil servant of long tenure, appellant was at the time in focus Director of the Bureau of Engraving and Printing. Among his official duties was concern for the security of our national paper currency against counterfeiting coupled with the obtaining of funding necessary for the acquisition of modern equipment to achieve such security. In December, 1976, the Chairman of the private concern, American Bank Note Company (ABN), invited Appellant to inspect an ABN security system (SSS). Being impressed with SSS, appellant subsequently officially participated in a substantial manner in the decision-making process concerning the procurement

from ABN of the SSS for our currency. It was during that same period that appellant ran afoul of the statute under which he is charged, for the jury found to its satisfaction that appellant negotiatėd for and consummated an agreement of employment with ABN, to become effective upon his government retirement. Such is a conflict of interest in violation of 18 U.S.C. 208(a).

Appellant grounds his appeal upon assertions of insufficient evidence to support the verdict, erroneous trial court jury instruction rulings resulting in impermissible amendment of the indictment rendering the same duplicitous, and prosecutorial misconduct. As we are wholly unpersuaded by appellant's contentions, his conviction is affirmed.

As to the sufficiency of the evidence. Without a detailed dissection by each of us of each of the instances specifically shown by the government's proof, a fair review of

the transcript establishes adequately that from December 1976, through June 1977, there was ample occasion when appellant, acting officially, could have reasonably been believed by the jury to have been participating personally and substantially with regard to the SSS as charged, while at the same time having an arrangement for prospective employment with ABN Company. This is true even if it now be conceded, for purposes of that examination, as appellant would claim, that employment negotiations had not occurred until on or after June 10, 1977, inasmuch as on three dates thereafter (June 15, 21, and 24, 1977) it was shown that he exercised conduct susceptible of belief as being "substantial participation" as to the SSS adoption. Only one such believable occurrence is all that is necessary for the jury to convict. It must be remembered that at this juncture the evidence is viewed most favorably to the government. (Cit-

ations omitted). We are obliged to reach the conclusion that the evidence was "'capable of or sufficient to persuade the jury to reach a verdict of guilt by the adequate standard.'" (Citations omitted). So much as to sufficiency of the evidence.

As to the instructions. Relying upon this Court's pronouncement in Levine v. United States, 104 U.S. App. D.C. 281, 261 F.2d 747 (1958), appellant offered and was denied by the Trial Court a theory of defense instruction. This refusal, it is claimed, constitutes reversible error. We disagree, for an examination of the instructions given reflects no review by the Trial Court of the facts relied upon by the government nor did they lend undue weight to the government's theory. Thus, no narrative of defendant's claimed facts was required to even any imbalance. United States v. Mathis, 175 U.S. App. D.C. 341, 343, 535 F.2d 1303, 1305 (a976) (per curiam). Nor did there exist the requir-

ed "involved theory involving 'law' or fact, or both," which would have mandated the case rule instruction. Laughlin v. United States, 154 U.S. App. D.C. 196, 207, 474 F2d 444, 455 (1972), cert. denied, 412 U.S. 941 (1973). This is not a case, as the Trial Judge stated, where there was a risk that the jury might convict although believing appellant's testimony.

Turning our attention further to the instructions given we find, by way of background, the indictment charged that during the period from December 1976, through June 1977, the appellant violated the statute in question. Subsequently, in an amended Bill of Particulars the government specified eight dates within the time frame charged as the dates on which appellant "substantially participated" as to the SSS and described those acts. Thus, when the Trial Judge gave his charge he stated the following:

In order to find the defendant guilty

> of that charge under the statute you must find that the government has proven beyond a reasonable doubt that on one or more of the following dates the defendant was, simultaneously, three things: (a) an officer or employee of the Executive Branch of the United States; (b) knowingly participated personally and substantially, in a proposal of the American Bank Note Company for a system to protect U.S. currency, knowing that American Bank Note Company had a financial interest in that proposal; and (c) was, on any one of those dates, negotiating for employment with ABN, or had an arrangement for prospective employment with the company: December 7, 1976; December 22, 1976; April 21, 1977; May 10, 1977; May 17, 1977; June 15, 1977; June 21, 1977; or June 24,1977.

Counsel for appellant argues that such instruction amended the indictment. The gravamen of such argument is predicated upon the contention that the grand jury could not have, in the course of its deliberations, consider an isolated as constituting an act of substantial participation. Instead, they submit that the challenged instruction broadened and altered the nature of the offense charged in the indictment. Thus, it is claimed that the instruction effectively

allowed the jury to convict appellant on a single act of substantial participation, as opposed to requiring the jury to find that his conduct over the entire period amounted to substantial participation.

It is well established that a criminal defendant "can only be tried upon an indictment as found by ... (a) grand jury, and especially upon all its language found in the charging part of that instrument." Ex Parte Bain, 121 U.S. 1, 9-10 (1887). Further, the prohibition against the amendment of an indictment after it has been handed down by the grand jury extends to literal (see, Ex Parte Bain, supra), as well as effectual (see Stirone v.United States, 361 U.S. 212 (1960) alterations. However, as stated by this court in Jackson v. United States, 123 U.S. App. D.C. 276, 280, 359 F2d 260, 264 (1966), cert. denied, 385 U.S. 877 (1966), it is always critical to consider that:

In every case of variance it can be

> argued that the grand jury that returned the indictment as is might not have been willing to return the indictment with the variance. This possibility can never be conclusively eliminated as a matter of abstract logic. Whether there is a reasonable possibility of prejudice, however, should be determined with some reference to the real world of juries and grand juries, and the realm of common sense which must guide the administration of the criminal law and rules of criminal procedure.

The indictment here in question alleged appellant's "substantial participation" over a period of time, and the instructions merely narrowed the number of dates on which the jury could even consider appellant's conduct as constituting "substantial participation". The dates enumerated in the jury charge all fell wihin the seven-month period alleged in the indictment. Notwithstanding defendant's bald assertions that this indictment was illegally amended, this panel is summarily persuaded that "reference to the real world of juries and grand juries" compels a conclusion to the opposite effect.

Appellant's claim that the Trial Court's instructions rendered the indictment duplicitous similarly is meritless. In essence, appellant contends that the judge's enumeration of eight dates, within the time charged, on which he could be found to have "participated substantially" altered the indictment to allege eight separate offenses in violation of Rule 8(a) of the Federal Rules of Criminal Procedure. The Trial Court's instructions did not, in our judgement, contravene such rule. Perusal of many cases in which error was predicated on the duplicity of an indictment reveals that an exception exists for a continuing scheme or a course of conduct which violates but one criminal statutory provision. See, e.g. United States v. Girard, 601 F2d 69,72 (2d Cir. 1979); United States v. Browning, Inc., 572 F2d 720, 725 (10th Cir. 1978). The challenged instructions issued by the Trial Court merely, in an apparent effort to clarify and narrow the

case for the jury, set forth eight separate dates (all of which dates fell within the period alleged in the indictment) on each of which the evidence pointed to substantial participation, in a legal sense, by appellant in the contractual decision-making process. This "narrowing" seems to us to have been beneficial to the appellant. Cohen v. United States, 378 F.2d 751, 754 (9th Cir. 1967), cert. denied, 389 U.S. 897 (1967). We find no error in such instructions.

Appellant's final assertion of reversible error is the prosecutor's alleged misconduct at appellant's trial. Without engaging in a full-scale analysis of appellant's specific contentions, we hold that they compel neither a new trial nor a judgement of acquittal. Our thorough study of the transcript and appellant's arguments reveals that appellant is primarily concerned with the credibility of certain government witnesses and the slight confusion which evolved during

trial with respect to which government agency was responsible for purchasing the SSS (and whether funding by the Federal Reserve Board and appellant's discussion thereof constituted personal and substantial participation). At this juncture we simply observe that appellant was represented at trial by highly regarded and able counsel, and, of great significance, such counsel both exhaustively cross-examined the witnesses whose testimony they submit was incredible and false and argued all the relatively minor inconsistencies in the government's prosecution theory in a thorough manner. Likewise, the Trial Court instructed fully on the matter of credibility. The jury, as is obvious from the verdict rendered, believed the witnesses' explanation of appellant's actions regardless of their personal frailties, and drew the plausible inferences against appellant. We believe that appellant's arguments of prosecutorial misconduct represent nothing more

than an attack on the sufficiency of the evidence which we have found to be without merit.

Having found appellant's contentions regarding the Trial Court's rulings on his post-verdict motions to be unpersuasive, appellant's conviction is accordingly affirmed.

APPENDIX B

DEPARTMENT OF THE TREASURY
Bureau of Engraving & Printing
Washington, D.C.

May 10, 1977

Mr. Thomas E. Gainor
Chairman, Subcommitte on Currency & Coin
Federal Reserve Bank of Minneapolis
250 Marquette Avenue
Minneapolis, Minnesota 55480

Dear Mr. Gainor:

In concert with our mutual understanding on the responsibility of the Bureau of Engraving and Printing to furnish currency compatible with the Federal Reserve's automated currency handling equipment, the purpose of this letter is to formalize the conclusions reached by the Bureau relative to the signature system to be utilized in the manufacture of United States currency.

We have been pleased to have participated with you and Mr. John Stoides, Project Engineer for the Federal Reserve Program, in evaluation of the Security Signature System

proposed by the American Bank Note Company to supplant the initial signature system which has been under development. Our joint evaluations of the demonstrated ABN technology have established that the system is capable of meeting the Federal Reserve's requirement for authenticity determination in a dynamic mode at a transport rate suitable to the existing equipment prototypes. Since similar satisfactory results have been attained from the initial system under development, the Bureau's determination on the methodology to be adopted for currency manufacture has been predicated on analysis of the comparative values of security controls and manufacturing advantages offered by the two systems.

We have determined that the Security Signature System proposed by the American Bank Note Company is significantly superior in the best interests of the Government, for the following reasons: (Listing ommitted)

I am advising the American Bank Note Company of our interest in acquiring equipment for the Bureau's manufacture of currency employing the new technology. As early as we are able to complete arrangements for this acquisition I will prepare for discussion with you and Mr. Stoides a timetable towards the availability of the first currency adapted for use on the automated currency handling equipment. Our continuing cooperative involvement will be essential to our mutual objectives, and we will rely heavily on your assistance.

We look forward to sharing the approaching challenges.

Sincerely.

s/

James A. Conlon
Director

cc: John Stoides

APPENDIX C

FEDERAL RESERVE BANK OF MINNEAPOLIS
250 Marquette Avenue Minneapolis, Minn.
55480

June 6, 1977

Mr. James A. Conlon, Director
Bureau of Engraving and Printing
Department of the Treasury
14th and C Streets S.W.
Washington, D.C. 20228

Dear Mr. Conlon:

Your letter of May 10 summarized very well the comparative merits of the proposed new system for currency authentication. On the basis of the several discussions and demonstrations in which John Stoides and I participated as representatives of the Federal Reserve's currency equipment development program, our conclusions are: (1) that the proposed system is compatible with the currency processing equipment we are developing, and (2) that its advantages with respect to security, cost, and flexibility offer a unique opportunity to improve U.S. currency in a way consistent with the

needs of the Federal Reserve Banks as well as the Treasury.

We fully support the direction outlined in your letter and look forward to working with you and your staff in the development of a timetable outlining the steps needed to bring this promising new concept to full fruition.

Sincerely,

s/

Thomas E. Gainer,
Chairman
Federal Reserve System
Subcommittee on
Currency and Coin

APPENDIX D

DEPARTMENT OF THE TREASURY
Bureau of Engraving and Printing
Washington, D.C. 20228

May 17, 1977

Mr. Edward H. Weitzen
Chairman of the Board
American Bank Note Company
70 Broad Street
New York, New York 10004

Dear Mr. Weitzen:

I have advised Mr. Thomas Gainor, Chairman of the Federal Reserve Subcommittee on Currency and Coin, that as a result of demonstrated effectiveness and our full assessment of the comparative security, manufacturing, and related advantages, the Bureau has determined adoption of the Security Signature System proposed by the American Bank Note Company will be in the best interest of the Government.

Accordingly, I would appreciate your furnishing to Mr. Jules Rieder, Chief, Office of Administrative Services, cost information

for the Bureau's acquisition of signature application equipment and related equipment and facilities to permit our full in-house preparation and manufacture of United States currency adapted to the Federal Reserve automated currency handling equipment.

In accordance with our letter of December 22, 1976, and subsequent discussions of process capabilities, cost information should be related to production capacity of equipment units proposed, to permit determination of quantities required to accommodate Bureau volume requirements.

We will also require pricing information for sensors designed for commercial manufacture, with the capability for adjustment by the Bureau to provide unique security controlled settings for final Federal Reserve use. It is understood cost information for the signature manufacturing equipment will include a component price for dynamic and static sensing equipment essential to manu-

facturing control.

As you know, the advancement of the automated currency handling program within the Federal Reserve dictates a requirement for the Bureau's early capability to deliver adapted currency. We will, therefore, be most appreciative of your continuing efforts to expedite this information and your concurrent arrangements for equipment availability.

I know the Federal Reserve personnel involved join with me in acknowledging the significance of your technical proposal to our objective, and in expressing appreciation for your assistance to date.

Sincerely,

s/

James A. Conlon
Director

APPENDIX E

CHARLES E. SMITH COMPANIES
1101 Seventeenth Street, N.W.
Washington, D.C. 20050

February 17, 1977

Charles W. Sharkey
American Bank Note Company
Land Title Building
Suite 735
Philadelphia, Pennsylvania 19110

Dear Mr. Sharkey:

Pursuant to our conversation last Friday, I am providing below an estimate of construction costs for items shown on the enclosed floor plan of Suite 605, 1745 Jefferson Davis Highway, Arlington, Virginia.

ENTRANCE DOORS - 1 pair 3'0" x 8'0"

Plastic laminate doors $850.00
(two building standard 3'0" x 8'0" plastic laminate single door will be provided by Landlord at no cost if you wish)

EXECUTIVE REST ROOM

1. 2'6" x 7'0" interior door (cost differential from building standard) 45.00
2. Private toilet 1150.00

3. Recessed medicine cabinet ..	95.00
4. Formica Vanity	550.00

PANTRY

1. 30" Acme Kitchen unit with range, sink and refrigerator	1325.00
2. Formica counter with storage shelving in cabinet	650.00

ENGINEERING ROOM

Shelving-1"x12"on adjustable brackets	165.00

CONFERENCE ROOM

1. Automatic volume damper with thermostat	485.00
2. Inline exhaust fan, including ductwork ½" sound insulation return grille, motor connect and feed	1425.00
3. Three way light switch	30.00

WORK ROOM

Separate circuit for Xerox	125.00

MISCELLANEOUS ITEMS

1. Lock set	40.00
2. Presumed wall electrical 7 @ $30.00	210.00
3. Presumed wall telephone 2 @ $145.00 ..... (including 1" EMT conduit)	290.00

When you return the signed copies of the lease, please advise me which of the

above items you will want in Suite 605 so that we can incorporate them into the construction drawings.

As I mentioned last Friday, time is of the essence, if you want to move into Suite 605 on May 1st. Consequently, your prompt attention to the above items and the leases is recommended.

Should you have any questions, please call me.

Very truly yours,
CHARLES E. SMITH MANAGEMENT, INC.

s/

Gary R. Transtrum
Commercial leasing Div.

APPENDIX F

STATEMENT BY PHILIP COLDWELL, MEMBER, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

May 3, 1979

(Prepared in lieu of appearance)

My comments today concern the Federal Reserve System's relationship with the Bureau of Engraving and Printing regarding the development of high speed currency processing equipment, the development of high level currency authentication techniques and the cost associated with printing currency.

In 1970, the Federal Reserve System initiated a project to automate the labor intensive process of counting, sorting, verifying and destroying currency. In 1972 it became apparent that it would be desirable to develop high level currency authentication techniques which would require placing a machine readable tag in the currency. The level of involvement of the Bureau and the Federal Reserve were different for each of the two projects and followed the traditional lines of responsibility. The Federal Reserve, as distributor of currency to the banking community, was responsible for the technical details of developing the machinery to count, authenticate, sort and destroy the currency. The Bureau, on the other hand, as manufacturer of the currency document, had responsibility for the technical details, procedures, and machinery needed to furnish a document that is compatible with automated currency processing. Therefore, the Bureau played a leading role in the evaluation, development, and placement of the authenti-

cation tag, whereas the Federal Reserve was concerned primarily with the resulting impact on the cost of currency and the ability to read the tag on the high-speed currency equipment. Conversely, the Federal Reserve and the Bureau worked closely on both of these projects.

(History of development of high-speed currency processing machines)

As stated earlier, General Telephone and Electronics was selected to develop high level currency authentication techniques. Between early 1974 and October 1977 the BEP and the Federal Reserve worked closely with General Telephone and Electronics Labs(GTEL) to incorporate a tag in U.S. currency and to develop sensors for high speed currency equipment. The GTEL tag was first tested on high speed equipment during November 1975 and again in August 1976. After the second test it was determined the GTEL concept would work, but several problems needed to be corrected. While making the necessary modifications and planning for the implementation of the GTEL tagged currency, Mr. Gainor, Chairman of the Subcommittee on Currency and Coin, was advised by Mr. Conlon that ABN developed a promising new tagging concept that should be considered before proceeding with GTEL. Several discussions of the proposed ABN technology were held between Messrs. Conlon and Gainor and Mr. John Stoides, the Project Manager for the high-speed processing equipment, during December 1976 and January 1977. Messrs. Stoides and Gainor witnessed a static demonstration of notes treated by the ABN process in February, and a dynamic test of the same technique, at high-

speed transport rates, in April. On May 10, Mr. Gainor received a letter from Mr. Conlon requesting the Federal Reserve's evaluation of the Security Signature System (SSS) and stating that the Bureau believes the process is significantly superior to GTEL. Mr. Gainor responded on June 6 that the Federal Reserve was satisfied that the concept is compatible with high-speed currency processing equipment. On June 24, Mr. Conlon advised me that the Bureau intended to proceed with acquiring the SSS but would have to do so under a lease to purchase agreement, which would significantly increase the cost of Federal Reserve notes. Mr. Conlon then suggested that the interest charges connected with a lease to purchase agreement and overhead charges totaling $14 million could be avoided if the Federal Reserve would be willing to advance funds for direct purchase of the equipment. An advance in this form would be a prepayment of F.R. currency printing costs. The matter was then referred to the Board's staff for consideration. I then contacted Bette Anderson, Under Secretary of the Treasury Department and asked her to clear this method of purchase with the Committee on Appropriations in both houses. Ms. Anderson responded on November 1977, that neither Senator Chiles nor Congressman Steede has any objection to purchase of the SSS with funds advanced by the Federal Reserve. During this same period of time the Subcommittee on Currency and Coin contacted Mr. Seymour Berry, then Acting Director of the Bureau, to confirm that the Bureau had decided to use the SSS instead of GTEL. Mr. Berry responded affirmatively.

(Continued discussion of events after Appellant's retirement)

On June 1, 1978, procurement and technical personnel from the Board's staff met with Mr. Berry to discuss details of the procurement. At this meeting the Board's staff was informed by Mr. Berry, for the first time, that the decision to purchase the equipment would be made jointly. In addition, he stated that BEP preferred that the Federal Reserve purchase the equipment and that Bep would furnish the necessary technical expertise.

(Continued discussion of events after Appellant's retirement)

(Discussion on the cost of currency)

Subscribed and sworn to before me May 3,1979,

in Washington, D.C.

Gena G. Stephens

My commission expires Aug. 31, 1980

APPENDIX G

"PROSECUTION VERSION OF CC# 79-00380-01 OF THE U.S. DISTRICT COURT FOR THE DISCTICT OF COLUMBIA"

(Prepared in response to direction of the District Court during sentencing of Appellant, to be forwarded by the Probation Officer to the Office of Personnel Management to be "brought to the attention of all federal employees").

On July 28, 1980 in a trial by jury before the Honorable Louis F. Oberdorfer, the defendant was found guilty of Count One (Conflict of Interest) in violation of Title 18 U.S. Code, Section 208(a) in the above identified case. According to U.S. Attorney G. ALLEN CARVER, JR., this offense was originally brought to the attention of the Criminal Division by the Inspector General of the U.S. Department of the Treasury in December 1978. The Government contends that on each of eight specific dates between December 7, 1976 and June 24, 1977, the defendant in the case was simultaneously the director of a bureau of the U.S. Department of the Treasury and was negotiating for or had arrangements with respect to prospective employment with a private company. The Government further contends that during this period, the defendant participated personally and substantially as director of the Government agency in a proposal of the private company. According to the Government, the private company had a significant financial interest in this proposal.

It should be noted that the defendant in this case entered a plea of not guilty and although he has been found guilty in a trial by jury and was subsequently sentenced to a period of unsupervised probation, he continues to insist on his innocence. He further reports that he intends to appeal this conviction.

The Government contends that prior to December 7, 1976, the defendant telephoned an official of the Federal Reserve System indicating that he should see a system under development by the private company referred to above. On December 7, 1976, the official visited the Division of the Department of the Treasury of which the defendant was the director at which time the defendant made him acquainted with the private company's system. On December 22, 1976, the defendant allegedly sent a letter to an officer of the private company indicating that the Government was prepared to follow up on the matter of the proposal. Subsequently, in April 1977, the defendant participated in a decision that the Government should go forward with the proposal of the system by requesting a cost proposal from the private company. The attorney for the Government states that in May 1977, the defendant as director of the agency of the U.S. Treasury sent a letter to the official of the Federal Reserve System indicating his approval for the system. On June 15, 1977, during a telephone conversation with the Governor of the Federal Reserve System, the defendant reportedly brought up the possibility of the Federal Reserve buying the private company's proposed system. The def- defendant reportedly stated to the Governor that he hoped the Federal Reserve System would favorably consider the purchase of the equipment. During this conversation, the

defendant reportedly told the Governor that he was planning to leave the Federal Government but did not inform him that as of June 10, 1977 he was negotiating for and had an arrangement with the private company concerning prospective employment. Subsequently, the defendant reportedly presented an explanation of the private company's system and later gave a personal demonstration of it to the procurement officer of the federal agency he directed. Finally, on June 24,1977 the defendant sent a letter to the Federal Reserve System Governor in which he highly recommended the private company's system and recommended a method of acquiring it and funding it. On July 1, 1977 the defendant retired from the directorship of the agency of the U.S. Treasury.

The attorney for the Government contends that the defendant had an arrangement for prospective employment with the private company as early as November 1976 which predates the dates of his participation in the agency of the U.S. Treasury which was exploring the proposed system. This claim is based upon the defendant's selection of a location and furnishings for an office of the private company in the Washington, D.C. Metropolitan area during November 1976. The defendant later occupied this office as an official of the private company following his retirement from the Federal Government position. During negotiations to acquire and plan the space for the private company's offices, the defendant allegedly indicated to the man with whom he was negotiating that he would be joining the private company and the office space being acquired would be his.

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-2230

UNITED STATES OF AMERICA

Apellee,

v.

JAMES A. CONLON

Appellant

PETITION FOR A HEARING EN BANC
BY THE UNITED STATES COURT OF APPEALS

MOTION OF APPELLANT JAMES A. CONLON

JAMES A. CONLON
6605 Lee Chapel Rd.
Burke, Virginia
22015

Pro Se

PETITION FOR A HEARING EN BANC

Pursuant to Rule 40(a) of the Federal Appellate Procedure, Appellant moves for a hearing en banc on the judgement of the United States Court of Appeals entered on August 13, 1981 pertaining to the appeal of Appellant from the District Court argued before the Court on February 19, 1981. The Court's judgement was issued in an Opinion for the Court filed by Judge Gordon, Senior District Judge for the Western District of Kentucky.

In support of this motion, Appellant respectfully submits the attached memorandum.

Respectfully submitted,

s/

James A. Conlon
Pro Se

(Memorandum omitted)

APPENDIX I

UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 80-2230 September Term 1981

United States of America

v.

James A. Conlon
Appellant

Criminal No. 78-00380

Argued: 2-19-81

BEFORE: Robinson, Chief Judge, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, Circuit Judges, and Senior District Judge James F. Gordon of the Western District of Kentucky*

ORDER

Appellant's pro se suggestion for rehearing en banc has been circulated to the full Court and no member of the Court or of the panel has requested the taking of a vote thereon. On consideration of the foregoing, it is ORDERED by the Court en banc that the aforesaid suggestion is denied.

Per Curiam

FOR THE COURT

GEORGE A. FISHER,
Clerk

Filed: SEP 25 1981

BY: s/
Robert A.Bonner
Chief Deputy
Clerk

* Sitting by designation pursuant to Title 28 U.S.C. 294(c).

APPENDIX J

DEPARTMENT OF THE TREASURY
Bureau of Engraving and Printing
Washington, D.C.

June 24,1977

Governor Philip E. Coldwell
Federal Reserve System
Washington, D.C. 20551

Dear Governor Coldwell:

In our recent conversation I asked your consideration of cost-saving advantages which can accrue to the Federal Reserve through your advancement of funds to E&P for major capitalization efforts to enhance the proficiency of currency manufacturing.

Although surcharge addition to billing rates permits our long-term accumulation of funds for low-level and intermediate level equipment acquisition, the Bureau is constrained in major outlay requirements to more costly lease-to-purchase arrangements.

While such lease-to-purchase has allowed us to achieve important cost reductions, the return to the Federal Reserve can be significantly more beneficial if we could acquire productivity enhancing equipment by direct purchase.

The cost-of-money impact in five years lease-to-purchase acquisition can be assessed at between ten and fourteen percent. Rental charges, as appropriate direct cost, are charged to the Federal Reserve in billing rates. Importantly, this direct cost is enlarged by a proportionate increased share of distributed overhead. Total increased cost of lease-to-purchase acquisition over the direct purchase price of major equipment, therefore, materially reduces the payback opportunity to the Federal Reserve.

If the Federal Reserve can agree to prepay to the Bureau sufficient direct costs to provide an advance of funds equivalent to the direct purchase price of major equipment,

a significant reduction in the cost-of-money expense can be realized, while concomitantly avoiding equally significant increased distributed overhead costs.

Equipment acquired by the Bureau through direct purchase with prepaid-cost-funds provided by the Federal Reserve would be enteredin Bureau accounts at zero-value, thereby precluding the need to establish annual depreciation charges. (Depreciation charges necessitated by amortization of Bureau-funded direct purchases are not only recovered through product billing rates, but also entail the addition of increased distributed overhead costs.)

We have currently received the quotation we requested from the American Bank Note Company, New York, for the delivery of two security signature impregnation machines to adapt Federal Reserve Notes for high-speed authentication on automated currency pro-

cessing equipment in the Federal Reserve Banks. In the absence of funds for direct purchase, we requested the quotation of a five year lease-to-purchase basis without termination liability. The proposal received requires sixty monthly payments in the aggregate amount of $9,802,000 for each machine. As a result of the required addition of overhead charges to the rental amounts to be recovered through billing rates to the Federal Reserve in the sixty month period, the total costs recovered from the Federal Reserve at the end of the five years, will be $28,316,000 for the two machines.

In follow-up of our discussion, I have requested the supplier to identify a cost for each machine on a direct purchase basis, which has been quoted at $6,971,530 per machine. Accordingly, if the Federal Reserve can advance $13,943,060 to the Bureau in prepayment of the direct costs of

our acquisition of the machines, the real savings to the Federal Reserve will approximate $14,372,940 in the five year period.

The instant equipment is critical to the full implementation of the automated currency processing equipment in the Federal Reserve Banks. It has been evaluated by the Subcommittee on Currency and Coin, and by the Bureau, to be uniquely suitable to the requirements of the currency processing equipment in technology, security, cost, and flexibility (copies of evaluations attached). The timetable for delivery after acceptance of the proposal is nine months. Concurrent development of ancilliary processes would be initiated to assist early production thereafter of fully adapted currency of the new design for continuing delivery to the Federal Reserve Banks.

We are hopeful the Federal Reserve will be able to approve a prepayment advance-

ment of funds to permit our early direct purchase of this essential equipment, as the most cost-effective method of acquisition. We will appreciate advice of your decision, and will, of course, proceed in accordance with your determination.

Sincerely,

s/

James A. Conlon
Director

APPENDIX K

INSPECTION REPORT SHEET

On May 19, 1980, I (GEORGE K.KRIKORIAN) went to the 6th District Court of Maryland, 7359 Wisconsin Avenue, Bethesda, Maryland, for the purpose of witnessing the trial of GARY R. TRANSTRUM. When I arrived Mr. TRANSTRUM was already in the courtroom in the spectator area. The court was not in session. I went in and sat down next to Mr. TRANSTRUM. While we were waiting for the court to begin Mr. TRANSTRUM and I engaged in conversation. It was apparent to me that Mr. TRANSTRUM had consumed alcohol because I smelled it on his breath. His speach was slurred and he staggered when he walked. Mostly Mr. TRANS-TRUM just rambled on. At one point Mr. TRANSTRUM remarked that he was going to get CONLON (JAMES A. CONLON) and when I asked him what he meant he stated something to the effect that he was going to get him with his

testimony; that they had no right to question his integrity by calling him a liar. TRANS-TRUM stated that he was not a liar and had not lied in his testimony about CONLON.

In my own mind I knew that Mr.TRANSTRUM should not be talking like that because of the fact that he was a witness in the Government's case against Mr. CONLON; however, I did not tell him how I felt. I just listened in hopes that he would change the conversation, which he did. The entire conversation about MR. CONLON lasted for less than a minute.

After Mr. TRANSTRUM'S case was over I drove him to Northern Virginia (Shirlington). During the ride we engaged in conversation and once again MR. TRANSTRUM brought up the topic of Mr. CONLON. He stated as he had earlier in the courtroom, that he had to get CONLON; that he was not a liar. I did not talk to him about this matter but only listened. He changed the subject as quickly as

he had brought it up. Mr. TRANSTRUM appeared to me to still be under the influence of alcohol.

Case Number
8-0580-0002

George K. Krikorian